



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,397	08/21/2003	Andrew Stanley Peck	LIT-022	8091

7590 04/07/2005

Attn: Arnold D. Litt, Esq.
Herten, Burstein, Sheridan, Cevalasco
Bottinelli & Litt, L.L.C.
Court Plaza North, 25 Main Street
Hackensack, NJ 07601

EXAMINER

HOGUE, GARY CHAPMAN

ART UNIT PAPER NUMBER

3611

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/645,397	Applicant(s) PECK, ANDREW STANLEY	
	Examiner Gary C Hoge	Art Unit 3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,10-18 and 21-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7,10-18 and 21-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

4

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 24 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims depend from themselves, and therefore it is impossible to determine the scope of the claims or to compare them to the prior art.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 1-7, 10-18, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vargish in view of Howell.

See Fig. 5. Vargish discloses a one-piece picture frame having a bottom portion 16, an upper portion 12a functioning as a clip member, and a central portion 14a. However, Vargish does not disclose a first image formed on the first side of the support member and a second image formed on the second side of the support member. Howell teaches that it was known in the art to provide a first image 20 formed on the first side of the support member and a second image 16 formed on the second side of the support member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a first image formed on the

Art Unit: 3611

first side of the support member and a second image formed on the second side of the support member disclosed by Vargish, as taught by Howell, in order to improve the aesthetic appearance of the picture frame.

Regarding claims 5 and 16, see column 3, lines 21 and 43, of Howell.

Regarding claims 6, 7, 17 and 18, Vargish discloses the invention substantially as claimed, as set forth above. However, it is not known what material is contemplated for the fabrication of the device. Howell teaches (column 1, line 11) that it was known in the art to use an acrylic sheet material for the fabrication of a transparent picture frame. It would have been obvious to one having ordinary skill in the art at the time the invention was made to fabricate the transparent picture frame disclosed by Vargish from acrylic, as taught by Howell, as a matter of choice in design, based on such factors as cost and availability of the materials to the designer.

Regarding claims 10, 11, 21 and 22, see Fig. 5 of Vargish.

5. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vargish in view of McClaughry.

See Fig. 5. Vargish discloses a picture frame having a bottom portion 16, an upper portion 12a, and a central portion 14a. However, Vargish does not disclose opposed inwardly-directed arcs on the upper portion. McClaughry teaches that it was known in the art to provide opposed inwardly-directed arcs on a frame into which a picture is slid. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the frame disclosed by Vargish with opposed inwardly-directed arcs, as taught by McClaughry, in order to facilitate insertion and removal of the picture.

Response to Arguments

6. Applicant's arguments filed December 27, 2004 have been fully considered but they are not persuasive.

Regarding claim 23, Applicant alleges that McClaughry is nonanalogous art. It has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, McClaughry is reasonably pertinent to the particular problem with which applicant was concerned, namely, how to remove a sheet of material from a holder.

Applicant's attention is further drawn to the U.S. Pat. No. Des. 284,777 to Anthony. This reference, recently discovered by the Examiner, shows notches to aid the withdrawal of photographs from a transparent frame.

Applicant's arguments with respect to the other claims are moot in view of the new grounds of rejection.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3611

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

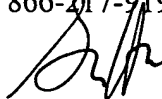
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary C Hoge whose telephone number is (703) 308-3422. After April 5, 2005, the examiner's telephone number will be (571) 272-6645. The examiner can normally be reached on 5-4-9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (703) 308-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

Art Unit: 3611

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gary C Hoge
Primary Examiner
Art Unit 3611

gch